HON'BLE SRI JUSTSICE C.V.NAGARJUNA REDDY

WRIT PETITION No.18873 of 1997

15.03.2007

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Between:

Hyder Siddiq

… Petitioner

AND

The Managing Director,
APSRTC, Musheerabad,
Hyderabad
and others

… Respondents

O R D E R:

This writ petition is filed questioning the order dated 27.08.1996 of the Managing Director, A.P.S.R.T.C., Musheerabad, Hyderabad (respondent No.1) and the proceedings dated 25.06.1983 of the Deputy Chief Traffic Manager (respondent No.2) as illegal, arbitrary and contrary to Regulation 8 of CCA Regulations.

The facts, which are not in dispute, are that the petitioner was appointed in Andhra Pradesh State Road Transport Corporation (for short 'the Corporation') as Conductor on 27.10.1973. Alleging that the petitioner committed some irregularities, departmental proceedings were initiated and four charges were framed against him. The Disciplinary Authority i.e. Depot Manager, A.P.S.R.T.C., Medchal Deport (respondent No.3), after proper consideration of the material available before him, passed order dated 18.05.1983 holding the petitioner guilty of all the four charges and imposed punishment of removal from the services of the Corporation. The petitioner then preferred an appeal before respondent No.2. The said appeal was

disposed of holding that after going through the enquiry report and the proceedings of respondent No.3, the charges levelled against the petitioner were proved beyond any doubt. However, respondent No.2, having regard to the long service of the petitioner, took a lenient view, set aside the order of respondent No.3 to the extent of the punishment imposed on the petitioner and directed his reinstatement duly treating the period from the date of removal till the period he reports for duty at the depot as 'loss of pay'. It was also directed that the petitioner's seniority would be reckoned in the category of Conductors in the city region from the date of reporting at the depot he posted.

The petitioner did not question this order. However, for the first time, he appeared to have filed review in the year 1995 for restoring his seniority and the same appeared to have been rejected by the Senior Manager on 24.02.1995. The petitioner filed another review on 22.03.1995 and it was rejected too on 08.07.1995. He then made representation to respondent No.1 on 25.07.1995 and the same was rejected on 27.08.1996.

Meanwhile, the petitioner was promoted on 17.05.1995 as Controller/Assistant Depot Manager and was allotted to Sanathnagar Division. Thereafter, the petitioner was reverted on 18.05.1996 to the post of Conductor.

The petitioner filed Writ Petition No.11838 of 1996 questioning the order dated 18.05.1996 reverting him to the post of Conductor. This Court disposed of the said writ petition on 24.06.1996. It is apt to extract the short order passed by this Court which reads as under:

> " Heard the learned counsel for the petitioner and Smt. A. Vijayanthi, the learned standing counsel for the respondents.
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> The petitioner herein was initially appointed as a Conductor on 27.10.1973. He was removed from service on 18.05.1983 on charges of committing certain cash and ticket irregularities. However, on appeal filed by him, he was ordered to be taken to duty as a fresh candidate by order dated 26.06.1983. Accordingly, he

was taken back to duty. After joining duty and after continuing in service for a long time, the petitioner seems to have filed a belated appeal dated 25.11.94 for restoration of his seniority with effect from the date of his initial appointment as Conductor on 27.10.1973. the said appeal was rejected by the Senior Manager (Personnel) by order dated 24.02.1995 and a further appeal therefrom was also rejected by the Regional Manager on 8.7.1995. The petitioner claims to have made a further representation to the Managing Director on 25.7.1995 seeking to place reliance on a Circular dated 2.6.1982 according to which, it is claimed, reinstatement by the Appellate Authority treating him as a fresh appointee in 1983 is illegal and impermissible. It is stated that the said representation made by him to the Managing Director is still pending and it is not yet disposed of. Meanwhile, the petitioner was temporarily promoted under Regulation 38 of Controller by proceedings dt.17.5.1995. The petitioner is now sought to be reverted as Conductor by the impugned proceedings dated 18.5.1996 basing on his seniority reckoned from 2.7.1983. The petitioner seeks to assail this order of reversion on the ground that his seniority must be reckoned from 27.10.1973 and that his representation dt.25.7.1995 to the Managing Director is still pending and as such, he cannot be reverted.

Inasmuch as the appeals filed by the petitioner were rejected by the Senior Manager as well ask the regional Manager as being time-barred and stale, I am not inclined to entertain this writ petition or interfere with the order of reversion dt.18.5.1996. However, as the petitioner claims to have made a representation to the Managing Director on 25.7.1995 and the same is still said to be pending, this writ petition is disposed of directing the Managing Director of the APSRTC (1st respondent herein) to dispose of the said representation filed by the petitioner and pass appropriate orders thereon in accordance with law within two months from the date of receipt of this order."

Following the directions of this Court, the Vice-Chairman and Managing Director passed order on 27.08.1996, where under he took

note of the fact that the petitioner having been found guilty of misconduct by the Disciplinary and Appellate Authority however was given the order of reinstatement by the Appellate Authority duly treating the period from the date of removal till the date he reports for duty as loss of pay and reckoning the seniority in the category of Conductors in the city region from the date of his reporting to duty pursuant to his order dated 25.06.1983. He also took into consideration the fact that the reinstatement of the petitioner by the Appellate Authority was purely on compassionate grounds and that the Appellate Authority on merits held that the punishment imposed by the Depot Manager was valid and proper. The representation of the petitioner was, therefore, rejected by the Managing Director holding that he was not entitled to seniority from the date of his appointment. The present writ petition is filed questioning the said order.

Shri S.A.K. Mynuddin, learned counsel for the petitioner submitted that the Appellate Authority while directing restoration of the petitioner has not denied him the seniority and that therefore he was, in fact, given promotion as Controller/Assistant Depot Clerk reckoning his seniority from the date of his first appointment. He further submitted that the reversion order was passed wrongly reckoning his seniority only from the date of his reporting to duty consequent on his reinstatement.

None appeared for the respondents. I have carefully considered the submissions of the learned counsel for the petitioner.

In the first place, it is required to be mentioned that the Disciplinary Authority, having found the petitioner guilty of misconduct as all the four charges levelled against him were held proved, removed him from service. Very curiously, the Appellate Authority not only having been in complete agreement with the order of the Disciplinary Authority as to the guilt of the petitioner, but having given an independent finding that the petitioner is guilty of misconduct, directed his reinstatement. While doing so, the Appellate Authority directed that

his seniority shall be reckoned in the depot from the date when he reports for duty. From the narration of the facts contained in the affidavit filed in support of the writ petition, it is clear that he had himself understood the order of the Appellate Authority as denying him past service. Otherwise, there was no need for him to have filed a review petition for the first time in the year 1995 which, even according to the petitioner, was rejected on 24.02.1995. Before the petitioner was promoted as Controller, second review petition filed by him on 23.03.1995 was pending and it was rejected on 08.07.1995. The plea of the petitioner, which is now sought to be put forth by his counsel during the course of argument that the Appellate Authority did not deny the petitioner of the past service, in my view, is a pure after thought. Moreover, this Court in Writ Petition No.11838 of 1996, the order of which was extracted hereinabove, categorically held that since the appeals (reviews) filed by the petitioner were rejected by the Senior Manager as well as the Regional Manager as being time barred and stale, he is not inclined to entertain that writ petition or interfere with the order of reversion dated 18.05.1996. This order, in fact, in my view, operates as res judicata disabling the petitioner from raising any further claim regarding his past service. However, Shri Mynoddin argued that the said writ petition was filed questioning the reversion of the petitioner from Controller to Conductor and that the present writ petition is filed questioning the order of the Managing Director rejecting his petition for review to consider the past service. While technically this is a fact, the petitioner is not entitled to maintain this writ petition raising this ground at this stage since he ought to have questioned the action of Senior Manager and Regional Manager in rejecting the review for restoration of his past service in the earlier writ petition itself. The writ petition is barred by Order II Rule 2 C.P.C. Though this Court has directed the Managing Director to dispose of the writ petition, he cannot maintain this writ petition purporting to be aggrieved by the order passed by the Managing Director because the petitioner

cannot be permitted to split the cause of action and approach this Court at different stages though he had the opportunity of raising the contention relating to the denial of past service when earlier writ petition namely; W.P.No.11838 of 1996 was filed.

For the aforementioned reasons, there are no merits in the writ petition and the same is accordingly dismissed.

C.V.NAGARJUNA REDDY, J

15.03.2007
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